

General Information Letter: A Subchapter S corporation may file composite returns on behalf of its nonresident individual shareholders without obtaining prior approval from the Department of Revenue.

April 7, 2000

Dear:

This is in response to your letter dated March 13, 2000, in which you request a ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated as follows:

We are writing on behalf of xxxxxxxxxxxxxxxxxxxx ("xxxxx") to request that xxxxx be granted permission to file a composite income tax return on behalf of its non-resident shareholders for the 2000 tax year and subsequent tax years.

xxxxx is an xxxx corporation which is treated as an S-corporation for federal income tax purposes. The main operations and tax functions of xxxxx are located in xxxxx, xxxx. xxxxx conducts operations in your state as well as fourteen other states.

Currently, xxxxx has thirty-five shareholders, fourteen of the shareholders are individuals and twenty-one are electing small business trusts. None of the shareholders are Illinois residents.

Currently, twenty-one shareholders are Electing Small Business Trusts ("ESBTs"). None of the beneficiaries, grantors or trustees of the ESBTs are residents of Illinois. Under Internal Revenue Code Sec. 1361, ESBTs will always be taxable on all of their income from the S-corporation whether the income is distributed to the beneficiaries or not. The beneficiaries of the ESBTs will never be taxed on the income from the S-corporation because the ESBTs will have already paid the tax on this income. Since your state adopts federal income as a starting point for state taxation, the state treatment of the ESBTs is the same as for federal purposes. Therefore, we request that the ESBTs be included in the composite.

xxxxx apportions its taxable income among the states where it conducts business and allocates the taxable income so apportioned among its shareholders.

In order to simplify the filing requirements of the shareholders of xxxxx we respectfully request the following rulings:

1. That xxxxx be granted permission to file a composite Illinois return for all of its shareholders, provided they meet other statutory and regulatory requirements, including the ESBTs.
2. That xxxxx be allowed to pay all of the tax associated with the composite return, including estimated tax payments where required.

3. That those shareholders who are included in the composite return and have no other source of Illinois income will not be required to report their share of income from Illinois on a separate return filed with the state.

xxxxx makes this request in order to eliminate the unnecessary expense and effort to the state and shareholders of filing separate income tax returns.

Benefits to your State

This proposal would benefit both the shareholders of xxxxx and the State of Illinois. The benefits to the State of Illinois would be as follows:

1. Reliable Payment of Tax: With xxxxx filing a single composite return and paying the state income tax on behalf of the shareholders, the state will receive its income tax in a lump sum directly from xxxxx. This payment mode will in effect be a withholding of your state's income tax for cash distributions being made to shareholders. This will guarantee the payment of tax out of xxxxxxxx earnings, and will save the state the expense of collecting this revenue from numerous individuals and ESBTs.
2. Proper Compliance: By allowing a single composite return, the state is assured of receiving a tax return which covers each shareholder who receives income xxxxx [sic]. This will assure proper compliance with your states [sic] statutes, rules and regulations and the reporting of all income sourced to your state.
3. Ease of Administration: Under a composite return filing, the state will have one return to administer, audit and review. Without a composite return, the state will have thirty-five returns to administer and audit. Moreover, these returns will be filed by individuals and ESBTs outside the State of Illinois.

In summary, xxxxx respectfully requests permission to file a composite Illinois income tax return for all of its shareholders.

RULING

Illinois Income Tax Regulations section 100.5100(a) states in pertinent part as regards eligibility to be included in a composite return as follows.

A composite return may be filed on behalf of nonresident individuals, trusts, and estates who derive income from Illinois and who are ... S corporation shareholders. Such composite return may include income and tax of Illinois residents if the petition described in subsection (c) of this Regulation is granted. The right to file a composite return is applicable to taxable years ending on or after December 31, 1987.

Section 100.5100(e) of the Regulations provides:

Nonresident individuals, trusts, and estates with Illinois source income other than from [an] ... S corporation ... may, but need not, be included in a composite return. If such nonresidents are included in a composite return, they will not be permitted to claim credits on their individual returns for

their share of the composite tax payments unless the authorized agent files a petition with the Department of Revenue requesting permission for the nonresidents to claim such credit and the petition is granted.

Regulations section 100.5110 states in pertinent part:

The filing of a composite return shall mean that the ... S corporation ... is the authorized agent of the individuals included in the return. As such, the authorized agent shall assume responsibility for all matters relating to the composite return including the following: filing the return, amended returns, and requests for extension of time; the payment of tax, penalty and interest; assessment and collection; receiving and responding to notices from the Department of Revenue; and participating in the audit of the return.

Other than the petitions required by Section 100.5100(c) and (e), the authorized agent does not have to notify the Department of Revenue that it will commence or cease the filing of a composite return, nor does it have to give notice of any change in the individuals who will be included in a composite return for the next year.

Regulations section 100.5140 provides that estimated payments shall be made on the basis of the tax shown on the composite return.

Regulations section 100.5120 states in relevant part:

Notwithstanding the assumption of liability of the authorized agent, the persons included in a composite return will continue to remain liable for any unpaid liability attributable to them in their separate capacities. The filing of a composite return will be considered as a group of separate returns which will meet the individual filing requirements of the Illinois Income Tax Act.

Based upon your representations, the above referenced provisions of the Illinois Income Tax Regulations plainly set forth the response to each of your requested rulings. xxxxx may, without prior Department permission, file a composite return on behalf of its nonresident trust and individual shareholders. xxxxx must pay all of the tax related to the composite return, including estimated tax payments where required. Those xxxxx shareholders without other Illinois source income are not required to file a separate Illinois income tax return.

As stated above, this is a GIL. Accordingly, it does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 2 Ill. Adm. Code 1200.110(b).

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)